IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Chapter VIII, Rule 32 (2) (b)
Description of Case

Writ Petition No. 12 of 2007 (S/B)

Date of decision: 14th March, 2007

A.F.R.(Approved for Reporting)

~~Not approved for reporting~~

Initials of Judge

Date

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARKAHND AT NAINITAL

Writ Petition No. 12 of 2007 (S/B)

Dr.Alok Tiwari s/o Sri J.P. Tiwari
aged about 41 years
R/o 663, Ram Nagar Colony,
Temple Road, Roorkee,
District Haridwar ……. Petitioner.

Versus

1. State of Uttaranchal through
   Secretary, Medical, Health and Family
   Welfare, Uttaranchal Shasan, Dehradun.
2. Additional Secretary,
   Medical, Health and Family Welfare,
   Uttaranchal Shasan, Dehradun
3. Chief Medical Officer, Haridwar.
4. Deputy Chief Medical Officer,
   Roorkee, Haridwar ……. Respondents

……..

Smt. Bina Pande, Advocate for the petitioner,
Sri Subhash Upadhyaya, Standing Counsel for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S.Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Smt. Bina Pande, Advocate for the petitioner,

Sri Subhash Upadhyaya, Standing Counsel for the respondents.

They are heard on admission.

2. Petitioner Dr. Alok Tiwari has filed this writ petition for the following reliefs:

"(i) Issue a writ, rule order or direction in the nature of CERTIORARI quashing the impugned transfer order dated 19.12.2006 and relieving orders dated 29.12.2006 & 08.01.2007 passed by respondent no. 2 & 4 respectively.

(ii) Issue a writ, rule order or direction in the nature of MANDAMUS commanding and directing the respondents not to interfere in the peaceful functioning of the petitioner as Medical Officer Incharge in PHC Belda, Roorkee, District Haridwar and pay him salary regularly.

(iii) Issue any other order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(iv) Award the cost of the petition in favour of the petitioner."

3. The petitioner, in substance, is challenging his transfer from P.H.C. Belda, Roorkee, District Haridwar to Base Hospital, Srinagar, Pauri Garhwal vide impugned order dated 19.12.2006.

4. It is not in dispute that the petitioner in pursuance of the transfer order dated 19.12.2006 was relieved vide orders dated 29.12.2006 / 08.01.2007.

5. Smt. Beena Pande, the learned counsel for the petitioner, vehemently argued that the petitioner has been transferred malafidely; the petitioner's transfer is in breach of the transfer policy; and the mention in the petitioner's transfer order that the petitioner has been transferred on administrative ground will adversely affect his future career as it would be entered in his service records that he was transferred on administrative ground.

6. Sri Subhash Upadhyaya, the learned Standing Counsel while countering the above submissions of the learned counsel for the petitioner has submitted that the petitioner in his writ petition has not attributed any malafides to any of the officers responsible for passing the petitioner's transfer order; the petitioner's transfer order does not violates any of the provision of the transfer policy; and the fact that a Government servant is transferred on administrative ground is never recorded in his service record and as such the petitioner's apprehension that his transfer on administrative ground would adversely affect his future career is only imaginary.

7. The Apex Court in the case of **Union of India and others Vs. S.L. Abbas** reported in **1993 4 SCC 357** outlining the scope of interference in the matter of transfer observed in paras 6 and 7:

> "6. An order of transfer is an incident of Government service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government

which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, - though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

8. As the petitioner, admittedly has not attributed any *mala fides* to any of the officers responsible for passing of his transfer order, the submission of the learned counsel for the petitioner in that behalf deserves an outright rejection.

9. The mere fact that the petitioner's transfer is 'Mid-Term Transfer', will not make the transfer order illegal. That apart, the 'Transfer Policy' does not confer upon a Government employee a legally enforceable right. The petitioner's apprehension that his transfer, on administrative ground, would adversely affect his future career has no foundation at all.

10. For the foregoing reasons, we do not find any scope for interference in the matter relating to petitioner's transfer.

11. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

(J.C.S. Rawat, J.) 14.03.2007

(Rajeev Gupta, C.J.) 14.03.2007

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